SUPREME

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 630.

THE UNITED STATES, PETITIONER,

vs.

JOSEPH S. HARRIS, EDWARD M. PAXSON, AND JOHN LOWBER WELSH, RECEIVERS OF THE PHILADELPHIA AND READING RAILROAD COMPANY.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

INDEX.

	Original.	Print.
Transcript of record from the district court of the United States for the eastern district of Pennsylvania	1	
Caption	1	
Writ of summons	1	
Statement of plaintiff's claim	2	
Plea of defendants	3	
Jury	3	
Verdict for plaintiff	4	
Motion for judgment non obstante venedicto	4	
Motion for a new trial, etc	5	
Opinion of the court	6	
Judgment for the defendant	7	
Bill of exceptions	8	
Petition for writ of error	10	
Assignments of error	11	
Certificate of clerk	11	
Writ of error	12	
Citation	13	
Argued	14	
Opinion	14	
Decree	15	
Order for mandate	16	
Mandate	16	
Clerk's certificate	17	
Writ of certiorari	18	19
Stipulation as to return to writ of certiorari	21	19
Clerk's certificate and return	22	19

1 IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

Of November Sessions, 1895.

No. 90.

THE UNITED STATES OF AMERICA, *vs.* JOSEPH S. HARRIS, EDWARD M. PAXSON and JOHN LOWBER WELSH, Receivers of the Philadelphia and Reading Railroad Company.	Summons Assumpsit.

Pleas before the Honorable, the Judge of the said Court:

It is thus contained:

Be It Remembered, That on the twentieth day of January, A. D., 1896, upon praecipe filed by Ellery P. Ingham, Esp., Attorney of the United States for the Eastern District of Pennsylvania, a Writ of Summons Assumpsit issues, which, with the return of the Marshal thereto, is in the words and figures following, to wit:

2 UNITED STATES, EASTERN DISTRICT OF PENNSYLVANIA. } *ss.*

THE PRESIDENT OF THE UNITED STATES,

To the Marshal of the Eastern District of Pennsylvania, Greeting:—

We Command You, That you summon Joseph S. Harris, Edward M. Paxson and John Lowber Welsh, Receivers of the Philadelphia and Reading Railroad, late of your District, if they may be found therein, so that they be and appear before the Judge of the District Court of the United States, for the Eastern District of Pennsylvania, at a session of the same Court to be holden at Philadelphia, on the first Monday of February next, to answer to the United States of America of a plea in assumpsit, etc. And have you then there this writ.

Witness the Honorable William Butler, Judge of said Court at Philadelphia, this twentieth day of January, A. D., 1896, and in the one hundred and twentieth year of the Independence of the United States.

[SEAL.]

CHARLES S. LINCOLN,
Clerk of District Court.

Endorsed: The service of the within writ is hereby admitted, January 22, 1896. J. D. Campbell, General Solicitor for Receivers.

Service accepted as appears above. So answers. Alexander P. Colesberry, U. S. Marshal, per Abram B. Myers, Deputy.

---

3 THE UNITED STATES OF AMERICA,

vs.

JOSEPH S. HARRIS, EDWARD M. PAXSON and JOHN LOWBER WELSH, Receivers of the Philadelphia and Reading Railroad Company.

U. S. D. C.

Nov. Sessions, 1895.

No.

STATEMENT OF PLAINTIFF'S CLAIM.

The United States of America, by Ellery P. Ingham, Esq., its Attorney, brings this suit against the defendants to recover the sum of five hundred dollars as a penalty for violation of R. S., Sect. 4,386–8, and avers as follows:

The defendants are receivers of the Philadelphia and Reading Railroad Company, a corporation organized under the laws of the State of Pennsylvania, having its principal place of business in the City of Philadelphia, in the said State.

The defendants' road forms a line of road over which cattle, sheep, swine and other animals are conveyed from one State to another, to wit, from the State of New York to the State of Pennsylvania.

On or about the 23d day of November, A. D., 1895, a car load of horses was shipped from Buffalo, in the State of New York, consigned to Philadelphia, in the State of Pennsylvania, over the Lehigh Valley Railroad Company, a line connecting with defendants' railroad, and came upon the line of the said defendants' railroad at Bethlehem, in the State of Pennsylvania, upon the 24th day of November, A. D.,
4 1895, and were transported over the said line thence to Philadelphia, in the said State, arriving at the Third and Berks Street Station of the said defendant railroad company on the 25th day of November, A. D., 1895.

The defendant did knowingly, wilfully and unlawfully confine the said horses in a car upon its said road for and during a longer period than twenty-eight consecutive hours, to wit, for the period of seventy-two consecutive hours, inclusive of the time during which said animals were so confined without such rest upon the said connecting road, to wit, the Lehigh Valley Railroad, from which the car was received by the defendant, without unloading the said horses for rest, water and

feeding for a period of at least five consecutive hours; that the said defendant was not prevented from so unloading said animals or any part thereof by storm or other accidental cause, and that said animals were not then and there carried by the defendant in a car or other conveyance in which they could and did have proper food, water, space and opportunity to rest.

And the said defendant has refused to pay the said sum of five hundred dollars, which is justly due the plaintiff, although often requested so to do. Wherefore the plaintiff brings suit.

ROBERT RALSTON,
Asst. U. S. Attorney.

---

5 And afterwards, to wit, on the thirtieth day of June, A. D. 1896, the said defendants,

Joseph S. Harris, Edward M. Paxson, and John Lowber Welsh, Receivers of the Philadelphia and Reading Railroad Company, by their attorney, John G. Lamb, Esq., make their plea in the words and figures following, to-wit:

IN THE DISTRICT COURT OF THE UNITED STATES, FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

THE UNITED STATES OF AMERICA, *vs.*	Nov. Sessions, 1895.
JOSEPH S. HARRIS, EDWARD M. PAXSON and JOHN LOWBER WELSH, Receivers of the Philadelphia and Reading Railroad Company.	No. 90.

The defendants named in the above entitled case plead "Non Assumpsit."

JOHN G. LAMB,
Attorney for Defendants,

JUNE 30, 1896.

6 And thereupon, on the eighth day of December, A. D. 1896, a jury being called, come, to wit: Edward, Lebo, James B. Wright, Daniel C. Brumbach, Isaac Richards, John T. Morris, Caleb C. Coburn, Wm. H. Dickson, John Bossard, Robert A. Michael, Samuel Marshall, Theodore I. Heizmann, Morgan H. Troth, who, being duly impanelled, returned, chosen, tried and sworn or affirmed to speak the truth in the issue joined in this cause between the United States of America, plain-

tiff, and Joseph H. Harris, Edward M. Paxon and John Lowber Welsh, Receivers of the Philadelphia and Reading Railroad Company, defendants, do say, that, upon the issue joined in this cause they find for the United States, plaintiff, and against Joseph S. Harris, Edward M. Paxon and John Lowber Welsh, defendans, for the sum of two hundred dollars, with costs.

---

7 MOTION OF THE DEFENDANTS FOR JUDGMENT FOR DEFENDANTS UPON POINTS RESERVED.

IN THE DISTRICT COURT OF UNITED STATES, EASTERN DISTRICT OF PENNSYLVANIA.

UNITED STATES OF AMERICA,	Nov. Sessions, 1895.
vs.	
RECEIVERS OF THE PHILADELPHIA AND READING RAILROAD COMPANY.	No. 90.

And now, December 9th, 1896, the defendants, by John G. Lamb, Esq., their attorney, moves the Court for judgment in their favor, and against the plaintiff, upon the following points reserved by the Court upon the trial of the above case.

"1. The statute under which this suit is brought is a penal one and must be strictly construed. It does not include within its terms Receivers of railroads, and the defendants cannot be held liable as such Receivers in this action."

"7. Under all the evidence in this case your verdict should be for the defendants."

JOHN G. LAMB,
Attorney for Defendants.

8 MOTION OF DEFENDANTS FOR NEW TRIAL.

IN THE DISTRICT COURT OF UNITED STATES, EASTERN DISTRICT OF PENNSYLVANIA.

UNITED STATES OF AMERICA,	Nov. Sessions, 1895.
vs.	
RECEIVERS OF THE PHILADELPHIA AND READING RAILROAD COMPANY.	No. 90.

And now, December 9th, 1896, the defendants, by John G. Lamb, Esq., their attorney, move for a rule to show cause why a new trial should not be granted in above case, and file the following reasons in support thereof:

I. Because the learned Judge refused the defendants' second point, as follows:

"2. There is no evidence in this case, that the defendants knowingly and willingly confined the said horses in said car, for a longer period than twenty-eight hours without unloading the same."

II. Because the learned Judge refused the defendants' third point, as follows:

"3. Upon the arrival of said horses at their destination in Philadelphia, and when the said car was put in position for unloading, the said horses being then in charge of an agent of the shipper, whose duty it was to unload and care for them, the relation of defendant, as a carrier, under the terms of the United States Statute, ceased, and this defendant cannot be held liable under the terms of said statute, for the period during which the horses remained in the car after that time."

III. Because the learned Judge refused the defendants' fourth point, as follows:

9 "4. After the said horses arrived at their destination it was the duty of the shipper's agent in charge thereof, under the bill of lading in this case, to feed and water the horses, if expedient, and the defendants herein cannot be charged with liability in this case, because of his failure so to do."

IV. Because the learned Judge refused the defendants' sixth point, as follows:

"6. The evidence in this case shows that the horses in question were accompanied, during transportation, by an agent of the shipper, whose duty it was, under the terms of the bill of lading issued therefor, to take care of, feed and water the said horses during transportation."

V. Because the verdict was against the evidence.

VI. Because the verdict was against the law.

JOHN G. LAMB,
Attorney for Defendants.

And afterwards, the cause having been heard upon the said motions of the defendants, for judgment for the defendants upon the points reserved, and for a new trial and reasons in support thereof, and due deliberation being had, the Opinion of the Court being filed is in the words and figures following, to wit:

IN THE DISTRICT COURT OF UNITED STATES,
10 EASTERN DISTRICT OF PENNSYLVANIA.

UNITED STATES,

vs.

JOSEPH S. HARRIS, EDWARD M. PAXSON and JOHN LOWBER WELSH
Receivers of the Philadelphia and Reading Railroad Company.

RULES FOR JUDGMENT ON POINTS RESERVED.

The defendants are sued under Section 4388 of the Revised Statutes, charged with willful disregard of the law relating to the transportation of live stock. The section provides that, "Any company, owner or custodian of such animals who knowingly and willfully fails to comply with the provisions of the two preceding sections shall for every such failure be liable for, and forfeit and pay a penalty of not less than one hundred nor more than five hundred dollars."

The construction of the statute, and the proceeding under it, are governed by the rules of the criminal law, as fully as if the proceeding was by indictment. The exclusive purpose of the section is to inflict punishment. Those named as liable to such punishment are

the Railroad Co., the owners, and the custodians of the animals. The defendants here sued are neither. What reason, therefore, is there for supposing that the suit can be maintained? The language must receive a strict construction, confined to its obvious import. (U. S. *vs.* Hartwell, 6 Wallace 395; U. S. *vs.* Wiltberger, 5 Wheat 76; Groosm *vs.* Harmon, 59 Ala. 519; Commth. *vs.* Wells, 110 Pa. St. 463.) No straining
11 however desperate, would be adequate to make the terms embrace the defendants. They are simply the Court's officers, appointed to execute its orders. The property is in custody of the Court and is controlled and managed by it, through these officers. It is immaterial to say that in this view no one can be punished under the section during such custody, if it were true. It would not be true, however, for the owners, as well as those in direct charge of the stock, may be so punished during such custody. If others also should be punished Congress should provide for it. The instances cited by the prosecution in which Courts have enforced the Inter-state Commerce law, and other statutory provisions relating to the management of railroads and their property, generally, while in the custody of the law, are equally immaterial. Such cases bear no relation to this. Of course, Courts will enforce observance of these provisions, in its management of the property and business, when attention is called to the subject. The question whether a criminal proceeding may be prosecuted to punish their officers under the section in question is a totally different one. If it be said the intention is not to punish these officers, then who is intended to be punished? Certainly not the company and stockholders, from whose control the road was taken, and who are not sued in consequence. Surely it is not intended to punish creditors, who had no possible connection with the matter complained of. The Courts permit suits to be brought
12 against such officers for debts, or other liabilities incurred, as a means merely of ascertaining the amount due; but judgments recovered even in such cases can only be enforced by consent and direction of the Court.

The defendants rule for judgment, notwithstanding the verdict is made absolute.

And thereupon it is considered and adjudged that the said plaintiffs, the United States of America, take nothing by their said writ, and that the said defendants, Joseph S. Harris, Edward M. Paxon and John Lowber Welsh, Receivers of the Philadelphia and Reading Railroad Company, do go thereof without day.

And afterwards, on the eighth day of March, A. D. 1897, a Bill of Exceptions, duly signed by the Honorable, the Judge of the Court, here being filed, is in the words and figures following, to wit:

13 IN THE DISTRICT COURT OF THE UNITED STATES,
EASTERN DISTRICT OF PENNSYLVANIA.

THE UNITED STATES OF AMERICA, *vs.*	Nov. Sessions, 1895.
JOSEPH S. HARRIS, EDWARD M. PAXSON and JOHN LOWBER WELSH, Receivers of the Philadelphia and Reading Railroad Company.	No. 90.

BE IT REMEMBERED, That in the said Sessions of November, 1895, came the said plaintiff into the said Court, and impleaded the said defendants, in a certain plea of Assumpsit, etc., in which the said plaintiff declared (Prout Statement) and the said defendants pleaded (Prout Plea). And thereupon issue was joined between them.

And afterwards, to wit, at a session of said Court, held at the District aforesaid, before the Honorable William Butler, Judge of the said Court, the eighth day of December, 1896, the aforesaid issue between the said parties came to be tried by a jury of the said District for that purpose duly empanelled (Prout list of jurors), at which day came as well said plaintiff as the said defendants, by their respective attorneys; and the jurors of the jury aforesaid, impanelled to try the said issue, being also called, came, and were then and there in due manner chosen and sworn or affirmed, to try the said issue; and upon the trial
14 the counsel of the said United States called a number of witnesses, the substance of whose testimony was that the defendants, as Receivers aforesaid, while being in possession of and operating the property of a railroad company, whose road formed part of a line of road over which cattle, sheep, swine and other animals were conveyed from the State of New York to the State of Pennsylvania, did, through their agents, within the District aforesaid, on November 24th, 25th, and 26th, 1895, knowingly and willfully confine certain horses in a car for a longer period than twenty-eight consecutive hours, without unloading the same for rest, food and water, for at least five consecutive hours, contrary to the provisions of Sections 4386, 4387, and 4388 of the Revised Statutes of the United States.

The counsel for the defendants produced evidence in defence of the plaintiff's claim, and the learned Judge thereupon charged the jury, reserving for subsequent determination the following points of law submitted by counsel for defendants:

1. "The Statute under which this suit is brought is a penal one, and must be strictly construed. It does not include within its terms Receiv-

ers of Railroads, and the defendants cannot be held liable as such Receivers in this action."

7. "Under all the evidence in this case your verdict should be for the defendants."

And thereupon the jury did find a verdict for the plaintiff in the sum of two hundred ($200) dollars, wih six (6) cents costs.

And thereafter, to wit, upon December 11th, 1896, counsel for defendants filed a motion for a rule for a new trial, and also for a motion for a rule for judgment for the defendants, *non obstante veredicto*, upon the aforesaid points of law reserved, and thereafter, to wit, on January 29th, 1897, argument having been had upon the defendants' said motion for rule for judgment, *non obstante veredicto*, upon the points of law reserved, the Court made absolute the said rule and filed an Opinion (Prout Opinion).

15 And thereupon, to wit, on January 29th, 1897, on motion of the counsel for the said defendants, judgment was duly entered for the defendants, *non obstante veredicto*, upon the said points of law reserved, and counsel for the plaintiff did then and there except to the said entry of judgment and Opinion of the Court.

The counsel for the plaintiff did thereafter duly tender this Bill of Exceptions to the said entry of judgment and Opinion of the Court, and requested the Judge aforesaid to sign the same, according to the form of the Statute in such case made and provided. And thereupon the aforesaid Judge, at the request of the said counsel for the plaintiff, did put his hand to this Bill of Exceptions, pursuant to the aforesaid Statute, in such case made and provided, the eighth day of March, 1897.

(Signed) WILLIAM BUTLER, *J.*

16 And afterwards, to wit, on the twenty-fifth day of June, A. D. 1897, a petition for a writ of error, with assignments of error and prayer for reversal, of the judgment entered in this cause, as also an order of allowance of a writ of error, being filed, are in the words and figures following, to wit:

IN THE CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT, EASTERN DISTRICT OF PENNSYLVANIA.

THE UNITED STATES OF AMERICA, Plaintiff in Error, *vs.* JOSEPH S. HARRIS, *et al.*, Receivers of the Philadelphia and Reading Railroad Company, Defendants in Error.	Nov. Sessions, 1895. No. 90.

PETITION FOR WRIT OR ERROR.

The above-named plaintiff in error, believing itself to be aggrieved by the rulings and final judgment of the District Court of the United States for the Eastern District of Pennsylvania, entered on the twenty-ninth day of January, A. D. 1897, in the above-named cause, hereby prays for a writ of error to the said District Court of the United States for the Eastern District of Pennsylvania, under and according to the laws of the United States in that behalf made and provided, and, also, that all and further proceedings in said District Court shall be suspended and stayed until the determination of said writ of error by said United States Circuit Court of Appeals, and that a transcript of the records of proceedings and papers upon which such final judgment was made, duly authenticated, may be sent to the United States Court of Appeals.

And it will ever pray.

JAMES M. BECK,
United States Attorney.
By F. F. KANE,
Ass't United States Attorney.

JUNE 25, 1897.
Allowed.
GEO. M. DALLAS,
Circuit Judge.

18 ASSIGNMENTS OF ERROR, ETC.

(Filed June 25, 1897.)

IN THE DISTRICT COURT OF THE UNITED STATES, EASTERN DISTRICT OF PENNSYLVANIA.

THE UNITED STATES OF AMERICA,
vs.
JOSEPH S. HARRIS, *et al.*, Receivers, etc.

Nov. Sessions, 1895.
No. 90.

ASSIGNMENT OF ERROR.

And now, to wit, June 25, 1897, comes the said United States of America, by James M. Beck, its attorney, and says that in the record and proceedings in the above entitled case there is manifest error in this, to wit:

The Court erred in making absolute the rule filed by the defendants for judgment, *non obstante veredicto*, upon the points of law reserved.

And the United States, plaintiff in error, prays that the judgment for the defendant entered in the said cause be reversed, and that judgment be entered therein for the United States upon the verdict rendered by the jury.

JAMES M. BECK,
United States Attorney.

By F. F. KANE,
Ass't United States Attorney.

18 UNITED STATES OF AMERICA,
EASTERN DISTRICT OF PENNSYLVANIA. } *ss.*

I, Charles S. Lincoln, Clerk of the District Court of the United States, for the Eastern District of Pennsylvania, do hereby certify that the annexed and foregoing is a true and faithful copy of the record and proceedings in the said Court in a certain action of Assumpsit therein lately depending, wherein the United States of America is the plaintiff and Joseph S. Harris, Edward M. Paxon and John Lowber Welsh, Receivers of the Philadelphia and Reading Railroad Company, are the defendants, as full and entire as the same now remains of record in said court.

In testimony whereof, I have hereunto subscribed my name and

affixed the seal of the said District Court, at Philadelphia,(this ninth day of July, A. D. 1897, and in the one hundred and twenty-second year of the Independence of the said United States.

CHARLES S. LINCOLN,
Clerk District Court.

[SEAL.]

---

19 UNITED STATES OF AMERICA, *ss.*

The President of the United States,

To the Honorable the Judge of the District Court of the United States for the Eastern District of Pennsylvania.

GREETING:

BECAUSE In the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court, before you, or some of you between the United States of America, plaintiff, and Joseph S. Harris, Edward M. Paxon and John Lowber Welsh, Receivers of the Philadelphia and Reading Railroad Company, defendants, a manifest error hath happened, to the great damage of the said United States of America, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record of proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Third Circuit, together with this writ, so that you have the same at the City of Philadelphia within thirty days, in the said United States Circuit Court of Appeals, to be then and there held, that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

WITNESS the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at Philadelphia, the twen'y-sixth day of June, in the year of our Lord one thousand eight hundred and ninety-seven.

WM. V. WILLIAMSON, JR.
Clerk of the U. S. Circuit Court of Appeals,
Third Circuit.

Allowed by
GEO. M. DALLAS,
Circuit Judge.

JUNE 29, 1897.